

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

BARRY MANTHE,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,
WARDEN SALMONSON,

Defendants.

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CIVIL ACTION NO. 5:20-CV-00074-RWS

ORDER

Plaintiff Barry Manthe, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. § 1983. *Bowen, et al., v. Federal Bureau of Prisons, et al.*, 5:20-cv-62-RWS-CMC, Docket No. 1 (Apr. 29, 2020). The Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The above-captioned matter was then severed from the originally filed case. Docket No. 1.

On February 22, 2021, the Magistrate Judge issued a Report recommending dismissal of the lawsuit for failure to prosecute or obey an order of the Court. Docket No. 4. Copies of this Report were sent to the Plaintiff at his last known address on February 22, 2021, and April 21, 2021, but no objections have been received. Docket No. 5. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420–21 & n.9 (5th Cir. 2019). Because no objections have been received, Plaintiff is barred from *de novo* review by

the District Judge of those findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

Nonetheless, the Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (finding that where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, the Report of the Magistrate Judge (Docket No. 4) is **ADOPTED** as the opinion of the District Court. It is thus

ORDERED that the above-captioned matter is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court.

So ORDERED and SIGNED this 23rd day of November, 2021.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE